

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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|----------------------------|---|---------------------------|
| PAUL SEAN GAFFNEY, #759646 | § | |
| VS. | § | CIVIL ACTION NO. 4:16cv40 |
| DIRECTOR, TDCJ-CID | § | |

ORDER OF DISMISSAL

Petitioner Paul Sean Gaffney, an inmate confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation concluding that the petition should be denied. Petitioner has filed objections.

The lawsuit concerns a prison disciplinary case. In his objections, Petitioner argues that the prison disciplinary captain did not afford him his due process rights, as provided by the Supreme Court in *Wolff v. McDonnell*, 418 U.S. 539 (1974). He complains that the Report and Recommendation did not delve into a discussion of his due process rights.

“Federal habeas relief cannot be had absent the allegation by a [petitioner] that he or she has been deprived of some right secured to him or her by the United States Constitution or the laws of the United States.” *Malchi v. Thaler*, 211 F.3d 953 (5th Cir. 2000) (internal quotations and citation omitted). Petitioner argues that he was denied his due process rights in his disciplinary case, however, the Fifth Circuit has made it clear that an inmate has a protected liberty interest guaranteeing his right to due process if and only if he lost good time and is eligible for release on

mandatory supervision. *Madison v. Parker*, 104 F.3d 765, 769 (5th Cir. 1997). *See also Dorsey v. McFarlin*, 609 F. App'x 266, 267 (5th Cir. 2015) (same); *Evans v. Baker*, 442 F. App'x 108, 110 (5th Cir. 2011) (same). Petitioner acknowledges that his conviction includes a deadly weapon finding and that he is ineligible for release on mandatory supervision. As such, the punishment he received in the disciplinary case did not involve a protected liberty interest, and he is not entitled to have his disciplinary case considered on the merits. Petitioner's objections lack merit.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Petitioner's objections are without merit. It is therefore

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **22** day of **February, 2016**.



Ron Clark, United States District Judge